

FILED

SEP 07 2010

PATRICK E. DUFFY, CLERK

By _____
DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

TANNER J. PARRICK, individually)	CV 09-95-M-DWM-JCL
and as Personal Representatives of the)	
Estate of Jerry J. Parrick, deceased,)	
and on behalf of Thais D. Park and)	
Maria Elliot,)	
)	
Plaintiffs,)	
)	
vs.)	ORDER
)	
FEDEX GROUND PACKAGE SYSTEM,)	
INC., BRIDGEWATER TRUCKING, LLC,)	
SERGEY BUSLAYEV, and VLADIMIR)	
KOCHUKOV,)	
)	
Defendants.)	
_____)	

Plaintiffs filed a Motion for Partial Summary Judgment in this matter on June 7, 2010. Plaintiffs request summary judgment on Defendants' Fifth, Sixth,

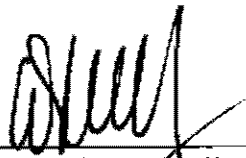
and Ninth Affirmative Defenses. Summary judgment is also requested as to the issue of Defendant Buslayev's liability for the vehicular accident at issue.

United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendation (dkt #143) in this case on August 3, 2010. The parties did not timely object and so have waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000). I can find no clear error with Judge Lynch's recommendation and therefore adopt it in full.

IT IS HEREBY ORDERED that Plaintiffs' Motion for Partial Summary Judgment: Defendants' Fifth, Sixth, and Ninth Affirmative Defenses and Buslayev's Liability (dkt #88) is GRANTED in part and DENIED in part. The Motion is GRANTED as to Defendants' Fifth and Ninth Affirmative Defenses. The Motion is DENIED as to Defendants' Sixth Affirmative Defense. As to the issue of Defendant Buslayev's liability, Plaintiffs' Motion is GRANTED to the extent that FedEx may not take a contrary position at trial and argue that Buslayev was not negligent. However, Plaintiffs' Motion on this issued is DENIED to the

extent Plaintiffs' seek anything further by way of this motion on liability.

Dated this 7th day of September, 2010.



Donald W. Molloy, District Judge
United States District Court

